IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Virendra Modi. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1000/2005 against the order dated 1-8-2005 passed by the Additional Chief Judicial Magistrate, Sirohi in FIR No.227/2001, Police Station, Sirohi.

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Date of Order: November 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sandeep Mehta, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Shambhoo Singh, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 1-8-2005 passed by the Additional Chief Judicial Magistrate, Sirohi (for short, "the trial Court" hereinafter), whereby the trial Court directed the investigating officer to get the statement of the complainant/non-petitioner No.2 recorded under Section 164 of the Code.

I have heard learned counsel for the parties.

Carefully gone through the order impugned.

It appears that the police investigated the matter thoroughly and filed negative final report on the basis of the statement of the prosecutrix that nothing has happened with her, the allegations levelled in the FIR were found to be incorrect and there was no medical evidence supporting the case of the prosecutrix. The trial Court, instead of accepting the negative final report, directed the investigating officer to get the statement of the prosecutrix recorded under Section 164 of the Code.

Learned counsel for the complainant-prosecutrix (non-petitioner No.2) submits that the prosecutrix does not wish to make any statement under Section 164 of the Code and what she stated in her statement under Section 161 of the Code is the correct statement. He also stated that the non-petitioner No.2 is not inclined to make any statement against the petitioner as the occurrence alleged in the report had never taken place.

In view of the statement of the learned counsel for the complainant/non-petitioner No.2, in my view, no useful purpose would be served in directing the investigating officer to get the statement of the prosecutrix non-petitioner No. 2 recorded by the Judicial Magistrate under Section 164 of the Code. When the complainant herself states that she does not want to make any statement against the petitioner then even if

her statement is recorded, it would be nothing but a futile exercise, which tantamounts to abuse of process of the Court.

In the result, the criminal miscellaneous petition is allowed. The impugned order dated 1-8-2005 passed by the trial Court, directing the investigating officer to get the statement of the prosecutrix recorded under Section 164 of the Code, is set aside and the matter is remanded to the trial Court to pass an appropriate order on the negative Final Report submitted by the police. The stay petition also stands disposed of.

(H.R. PANWAR), J.

mcs